

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

**MARTIN OSORIO-RAMA,**

Case No.

Plaintiff,

Hon.

v.

**DEPARTMENT OF HOMELAND SECURITY,  
and UNITED STATES CUSTOMS AND BORDER  
PROTECTION,**

Defendants.

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**INTRODUCTION**

1) This is an action under the Freedom of Information Act ("FOIA") seeking declaratory and injunctive relief against Defendant Department of Homeland Security ("DHS") and Defendant United States Customs and Border Protection ("CBP"). Plaintiff, with undersigned counsel's assistance, filed a FOIA request with CBP on June 28, 2019. In violation of the statutory time limit, Defendants have not determined whether they will comply with the request nor have they produced any responsive records.

**JURISDICTION AND VENUE**

2) This Court has jurisdiction under 5 U.S.C. § 552 et seq., 28 U.S.C. § 1331, and 28 U.S.C. § 2201.

3) Venue is proper under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e)(1) because this is a civil action in which Defendants are national agencies, because Plaintiff resides in this judicial district and there is no real property involved in this action.

4) Plaintiff has exhausted any and all administrative remedies in connection with his FOIA request as detailed below.

### **PARTIES**

5) Plaintiff Martin Osorio-Rama (“Plaintiff”) is a person that at all relevant times resided and continues to reside in Holland, Michigan.

6) Defendant DHS is an executive agency of the United States within the meaning of 5 U.S.C. § 552(f)(1). Among other duties, DHS is responsible for administering the immigration laws of the United States. DHS has in its possession, custody, and control records that Plaintiff seeks.

7) Defendant CBP is a component agency of DHS and is an agency within the meaning of 5 U.S.C. § 552(f)(1). Among other duties, CBP is responsible for enforcing immigration laws at the United States border. CBP has in its possession, custody, and control records that Plaintiff seeks.

### **FACTUAL ALLEGATIONS**

8) Plaintiff incorporates by reference the preceding paragraphs as though set forth fully herein.

9) On June 21, 2019, Plaintiff, by and through his counsel, sent a FOIA request by certified mail to CBP requesting any and all records the agency had pertaining to him.

10) The above request was sent to CBP's FOIA Division at 90 K St NE, Washington, DC 20229. This address is the correct address to send a FOIA request by mail.<sup>1</sup>

11) The request was received by CBP at 10:50 a.m. on June 28, 2019. *See Exhibit A.*

12) Defendants are obligated under 5 U.S.C. § 552(a)(3) to conduct a reasonable search for records responsive to a FOIA request and to issue a determination within the time period set forth at 5 U.S.C. § 552(a)(6) - 20 working days. An extension may be taken if there are "unusual circumstances". 5 U.S.C. § 552(a)(6)(B)(i). Any such extension taken requires "written notice" and shall provide "the date on which a determination is expected to be dispatched." *Id.* The extension shall not be "for more than ten working days" unless the requestor consents to a longer extension. *Id.*

13) CBP emailed undersigned counsel on July 5, 2019 acknowledging receipt of the FOIA request. *See Exhibit B.* The acknowledgement erroneously states that the request was received on July 2, 2019. While the acknowledgement references the permissibility of a 10-day extension, it does not indicate that such an extension is being taken or provide a date on which a determination is expected to be dispatched. The acknowledgement states it will take "a minimum of 3-6 months" to process the FOIA request, a plain violation of 5 U.S.C. § 552(a)(6).

14) Plaintiff has not consented to Defendants taking an extension beyond 10 working days.

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<sup>1</sup> <https://www.dhs.gov/foia-contact-information> (Last accessed on August 12, 2019).

15) Defendants have not made a determination on Plaintiff's FOIA request or released records as of today, August 13, 2019. A screenshot from [www.foiaonline.gov](http://www.foiaonline.gov) taken today at 1:10 PM is appended as **Exhibit C** to confirm.

**CAUSE OF ACTION FOR VIOLATION OF FOIA**

16) Plaintiff incorporates by reference the preceding paragraphs as though set forth fully herein.

17) There are no circumstances that justify Defendants' delay in processing the FOIA request; Defendants have failed to exercise due diligence in timely responding as is their pattern and practice of behavior.

18) Defendants have failed to make a timely determination concerning the FOIA request.

19) Defendants have withheld requested records subject to FOIA disclosure in violation of 5 U.S.C. §§ 552(a)(3) and (a)(6) and the regulations promulgated thereunder.

20) Defendants' failure to make a determination concerning Plaintiff's request for records within the statutory time period constitutes a constructive denial of Plaintiff's request and Plaintiff is deemed to have exhausted his administrative remedies. 5 U.S.C. § 552(a)(6)(C)(i).

**PRAYER FOR RELIEF**

WHEREFORE Plaintiff requests that this Court grant the following relief:

(A) Declare that Defendants have violated the FOIA;

(B) Issue an injunction ordering Defendants to respond to Plaintiff's FOIA

request by promptly providing the records improperly withheld;

(C) Award costs and reasonable attorney fees incurred under 5 U.S.C. § 552(a)(4)(E); and

(D) Grant such further relief as the Court deems just and proper.

Dated: August 13, 2019

Respectfully Submitted,

/s/ Marc Asch (P75499)  
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